

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KAYLA GORE; JAIME COMBS; L.G.; and
K.N.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his official
capacity as Governor of the State of
Tennessee; and LISA PIERCEY, in her
official capacity as Commissioner of the
Tennessee Department of Health,

Defendants.

Case No. 3:19-CV-00328

DISTRICT JUDGE RICHARDSON
MAGISTRATE JUDGE HOLMES

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully bring to the Court's attention a development in federal law that is highly relevant to this litigation. Specifically, the Supreme Court of the United States issued its opinion in *Bostock v. Clayton County*, Case No. 17-1618, 2020 WL 3146686 (June 15, 2020), a case which asked the Supreme Court to decide "whether an employer can fire someone simply for being homosexual or transgender." *Id.* at *3. This question, much like Plaintiffs' Equal Protection claims in the present case, required an analysis of whether discrimination based on transgender status and sexual orientation is necessarily discrimination "because of sex." *Id.* at 5; *see* Amen. Compl., Doc. 59 at 33-36; Plaintiffs' Mem. in Support of Mot. for Sum. Jdg., Doc. 61 at 21-26; Plaintiffs' Reply in Support of Mot. for Sum. Jdg., Doc. 93 at 4-7.

The Supreme Court answered this question plainly and forcefully: "[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Bostock* at *7. Justice Gorsuch, writing for the majority, held that

“discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.” *Id.* at *11.

In a dissenting opinion, Justice Alito observed that the Court’s holding was not limited to the context of Title VII and that it is “virtually certain to have far-reaching consequences.” *Id.* at *39 (Alito, J., dissenting). Justice Alito specifically identified the present case as one of those potentially impacted by the Court’s interpretation of sex discrimination as encompassing sexual orientation and transgender status. *Id.* at *43 (Alito, J., dissenting).

Dated: July 2, 2020.

Respectfully submitted,

s/ John T. Winemiller

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which provides electronic notice of the filing to all counsel of record, including:

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This 2nd day of July, 2020.

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